



Appeal Decision

Site visit made on 1 December 2020

by Chris Forrett BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st December 2020

Appeal Ref: APP/R1845/W/20/3255007

Land to rear of 30 Gardners Meadow, Bewdley, Worcestershire DY12 2DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Tony McDowell against the decision of Wyre Forest District Council.
 - The application Ref 20/0252/S73, dated 27 March 2020, was refused by notice dated 20 May 2020.
 - The application sought planning permission for a detached dwelling and associated works without complying with conditions attached to planning permission Ref 19/0450/FULL, dated 3 December 2019.
 - The conditions in dispute are Nos 5 and 6 which state that: (5) 'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, (or any order amending, revoking and/or re-enacting that order, with or without modification), no enlargement, improvement or other alteration of a dwellinghouse or its roof shall be carried out without further subsequent planning approval of the Local Planning Authority' and (6) 'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and/or re-enacting that order with or without modification), no windows/dormer windows shall be inserted or constructed other than those expressly authorised by this permission'.
 - The reasons given for both conditions are: 'In order to define the permission in accordance with Policy CPO7 of the Adopted Core Strategy and Policy SAL.UP7 of the Adopted Site Allocations and Policies Local Plan and the National Planning Policy Framework'.
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Decision

1. The appeal is allowed and the planning permission Ref 19/0450/FULL for a detached dwelling and associated works at Land to rear of 30 Gardners Meadow, Bewdley, Worcestershire DY12 2DG granted on 3 December 2019 by Wyre Forest District Council, is varied by deleting conditions 5 and 6.

Procedural Matter

2. At my site visit, I saw that a dwelling was in the process of being constructed at the appeal site. Whilst this was very similar to that on the plans supplied to me from permission 19/0450/FULL, there were some minor differences including the fenestration detail on the north-east elevation.

3. As I understand it, a subsequent permission¹ has been granted for a dwelling at the site although I have not been provided with full details of this permission, nor could I establish from the information before me which permission (if either) has been implemented. Notwithstanding that, I have determined the appeal on the basis of the proposal before me, i.e. the removal of conditions 5 and 6 from permission 19/0450/FULL.

Main Issue

4. The main issue is whether conditions 5 and 6 are necessary.

Reasons

5. Paragraph 53 of the National Planning Policy Framework (the Framework) sets out that planning conditions should not be used to restrict national permitted development rights² unless there is clear justification to do so. The Planning Practice Guidance also states that such conditions may also fail to pass the test of reasonableness or necessity.
6. The reason the Council has given on its original decision notice for the conditions is that it is in order to define the permission. To my mind, that is not a reason to justify the removal of any permitted development rights. That said, in refusing permission to remove these conditions, the Council have raised concerns that changes could be made which may affect the character and appearance of the area; could result in overlooking and a loss of privacy to the occupiers of the adjoining residential properties; and could result in unsuitable living conditions for the future occupiers of the dwelling by having a restricted garden area.
7. Therefore, in considering whether the conditions are necessary, I have had regard to these concerns.

Character and appearance

8. The appeal site is located on a private housing estate which, as I understand it, started to be developed in 1989. The houses on the estate themselves are of a traditional design and form an attractive environment for its occupiers. The Council are concerned that development undertaken using permitted development rights may result in proposals that would give rise to harm to the character of this private estate.
9. I acknowledge that it is possible that development undertaken utilising permitted development rights may not reflect the appearance and form of the host dwelling (and the wider area). However, this is not unique to the appeal site and its surroundings.
10. Whilst the desire of the Council to prevent extensions which are out of character with the host building and the area in general clearly has some merit, I am far from convinced that in this case there is a clear justification for doing so. This is particularly the case given the size of the approved dwelling and the shape of the site itself which would, in practice, largely restrict any extension to being single storey in nature. I am also conscious that one of the requirements of the permitted development rights is that extensions need to

¹ Reference 20/0453/FUL dated 9 July 2020

² contained within the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO)

match the existing external materials of the host property. That would mean that the parts of such extensions that might be visible from the surrounding area would be unlikely to have a significant impact on the overall character and appearance of the area.

11. Furthermore, from the evidence before me, the other parts of the Gardners Meadow estate do not have such permitted development right restrictions nor did a previous proposal for a new dwelling at the appeal site³.
12. In addition to the above, the Council have also referenced a previous proposal for a contemporary designed dwelling at the site and that if the disputed conditions are removed then the Appellant may revert back to their original intentions which is stated to be out of keeping with the character and appearance of this housing estate.
13. However, I find this line of argument untenable. Furthermore, the Council have provided very little explanation or justification for such a position. I also consider that such a fundamental change in design is unlikely, especially given the advanced nature of construction works I observed on-site.
14. In terms of heritage assets, my attention has been drawn to the Friends Meeting House on Lower Park which is a Grade II Listed Building. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the setting of this building. That said, I consider that any possible future alterations to the appeal dwelling which could be undertaken using permitted development rights would be highly unlikely to have any discernible effect on the setting of this building.
15. I have also had regard to the effect of the proposal on the Bewdley Conservation Area which adjoins the appeal site. However, I consider that any development which could be undertaken utilising permitted development rights would have little impact on views into and out of the Conservation Area. I therefore conclude that its setting would not be harmed. In short, I consider that the deletion of these planning conditions would accord with the conservation aims of the Framework and Policy SAL.UP6 of the Wyre Wyrre Forest District Site Allocations and Policies Local Plan (2013) (LP).

Living conditions

16. In respect of the potential effect on the living conditions of the adjoining occupiers, at 46 Lax Lane and 30 Gardners Meadow, the Council's concern principally relates to additional windows being installed.
17. However, it is significant that any new windows above the ground floor level to the side elevation could only be installed using permitted development rights if they were obscure glazed and non-opening unless the opening part is greater than 1.7 metres above the floor of the room which it served. To that end, there would not be any significant overlooking potential from such windows to the garden area of No.46 and as such I find that it is not necessary to impose any further restrictions than those already set out in the GPDO.
18. In respect of the rear elevation facing No.30, I note that permission 19/0450/FUL does not require the first-floor rear facing bedroom window to be obscurely glazed. To that end, I can only conclude that the Council considered

³ Reference 16/0287/FULL dated 15 August 2016

that the distance between this window and No.30 is sufficient to ensure that there would not be any excessive overlooking and loss of privacy. Given this, I consider that any additional windows in that rear wall would similarly not give rise to any significant harm.

19. Therefore, in respect of No.30, the concern must stem from a potential two-storey/first floor extension. However, the permitted development rights prevent an extension with its eaves greater than 3 metres in height when within 2 metres of the boundary (as is the case here to 26 Gardners Meadow) and any extension which is greater than single storey within 7 metres of the rear boundary. Taking both of these factors into account, there would be only a very limited extension possible and as such I consider that there would not be any significant impact on the living conditions of the occupiers of No.30.
20. In addition to the above, I consider that given the relationship between the dwelling and the surrounding properties there would not be any significant overlooking opportunities from any additional ground floor windows.
21. Turning to whether the future occupiers of the dwelling would be left with an adequate garden area, the plans before me indicate that the approved dwelling would not have an especially small garden area as it would wrap around the side of the house as well as the rear. Given this, I consider that the garden area would not be so constrained as to warrant the withholding of permitted development rights for extensions. I also find it significant that the Council did not seek to remove permitted development rights for domestic outbuildings in the garden, which further indicates to me that there is, and would be, sufficient garden area for the future occupants of the dwelling even if there was further development at the property.

Summary

22. In summary, I consider that it is not necessary to remove the permitted development rights as set out in conditions 5 and 6 on permission 19/0450/FULL. I therefore find that the removal of these conditions would not cause conflict with Policy SAL.UP7 of the LP or the overarching aims and objectives of the Framework.
23. Finally, the Council have referred to Policy CS07 of the Wyre Forest District Local Development Framework Core Strategy (2010) in their reason for refusing the application. However, as noted by the Appellant, this policy is concerned with delivering community wellbeing. Specifically, this relates to existing and improved community facilities, providing community infrastructure and developer contributions, none of which is relevant to the matter before me. To that end, I find that there is no conflict with this policy.

Conclusion

24. For the reasons set out above, I allow the appeal and remove conditions 5 and 6 of planning permission 19/0450/FULL so that any development at the dwelling which benefits from permitted development rights can proceed without any further permission from the Council.

Chris Forrett

INSPECTOR